STATEMENT OF

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BEFORE THE

SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION
SUBCOMMITTEE ON AVIATION

REGARDING S. 1218

JUNE 12, 1985

Madam Chairman and Members of the Subcommittee:

The Department is pleased to take the opportunity to comment on S. 1218, the International Air Transportation Protection Act of 1985. The proposed legislation would require DOT to revoke an international air transportation certificate if, after a hostile takeover, an airline attempted to sell or did sell or transfer that certificate as part of a liquidation effort or other than in the ordinary course of business.

We have been informed that the full Commerce Committee has scheduled a markup of S.1218 for tomorrow morning. For the reasons that I will discuss, Madam Chairman, we believe legislation in this area to be unnecessary.

The Department has considered carefully its authority to protect the public interest in transfers of international route rights. On May 31, Chairman Danforth and Senator Eagleton wrote the

Secretary expressing their concern over the potential adverse impact of a hostile takeover of an air carrier that holds a certificate to engage in international air transportation. Their letter requested an assurance that the Department will review any proposed transfer of TWA's international route authority to ensure its consistency with the public interest as required by Section 401(h) of the Federal Aviation Act.

The Secretary responded by letter dated June 5, 1985, stating that the Department's authority to review certificate transfers or sales of aircraft allows us to protect the public interest in limited entry international routes. The Secretary also pointed out that, in many cases, the Department can take action to replace a carrier serving a limited entry route if its service does not reflect the carrier proposal upon which the route award was based. The Secretary concluded by expressing the Department's belief that it has adequate authority to protect the interest of the traveling public.

In exercising this responsibility, the Department will examine route transfers on a case-by-case basis to determine whether each transfer is in the public interest. A route transfer agreement must meet the public interest standard of Section 401(h) and, if a substantial portion of an air carrier's properties are also involved, Section 408.

Section 401(h) provides that no certificate can be transferred unless the Department finds that the transfer is consistent with the public interest. In addition, Section 408 requires prior approval of an air carrier's purchase, lease or operating arrangement involving a substantial portion of another carrier's properties and establishes a competitive and public interest standard for approval of such transactions.

The Department believes that the statutory authority cited above has proven, and will continue to prove, adequate to protect the public interest in the event of a proposed transfer of an international route certificate, without undue intrusion into the operation of the marketplace and the industry.

Accordingly, we believe S. 1218 is unnecessary in light of the Department's existing authority. Further, we take particular exception to the finding that "hostile takeovers of air carriers may jeopardize the provision of such transportation in a dependable and safe manner." There may be hostile takeovers, particularly in the case of one air carrier's hostile acquisition of another air carrier, where the result of the takeover increases management efficiency and financial stability and provides direct benefits to consumers. We believe that is it unwise to legislate a finding of this nature which necessarily depends upon the facts and circumstances of the particular case.

Before concluding, I would like to state for the record the Department's position on two related matters: H.R. 2575, a bill that would dictate proceedings associated with the continuing fitness of Trans World Airlines, and a petition by TWA for an investigation into the fitness of TWA should Carl Icahn acquire control of the company.

As I testified last week before the Aviation Subcommittee of the House Committee on Public Works and Transportation, the Department finds H.R. 2575 to be unnecessary. We believe that the mandatory fitness proceedings that H.R. 2575 would impose are an unnecessary expansion of authority that is inconsistent with the principles of deregulation established by Congress in the 1978 Airline Deregulation Act. The Department believes that we already have adequate authority to take any necessary action to ensure the continuing fitness of U.S. air carriers.

As for TWA's petition for a fitness investigation, the Department announced its decision earlier this week, on June 10. After careful consideration of comments filed by interested parties, both in support of and against the application, the Department issued an order denying TWA's application.

The Department does not have the authority to require that transactions involving the acquisition of control of air carriers by persons with no other transportation interests be submitted to the Department for approval. However, the principal issue in this

proceeding was not whether Mr. Icahn should be allowed to gain control of TWA, in and of itself, but whether the Department may review the fitness of a potential new owner of an air carrier in advance of the person's actual control of the carrier. The decision concludes that, while the Department has authority under the Federal Aviation Act of 1958, as amended, to review that question, that authority should be used only in rare and exceptional cases.

The Department does not intend through our authority to review the continuing fitness of carriers to be drawn into takeover attempts or other management disputes as a matter of course or to otherwise substitute unnecessary government regulation for the competitive pressures of the marketplace. The Department's routine involvement in takeover contests would be contrary to Congress' decision in the Airline Deregulation Act that prior Government approval was unnecessary whenever a new person acquired control of an air carrier. We do not believe that our fitness review authority should be exercised before control has been acquired unless the likelihood of a change in control is strong and there is a compelling prima facie case of a lack of fitness. The decision finds that the institution of such an investigation is not warranted in this case because TWA has not made out a compelling prima facie case of lack of fitness with respect to Mr. Icahn.

In reaching this conclusion, the decision evaluates the information submitted regarding Carl Icahn's "fitness" under the standard three-part test for holding an operating certificate. This test focuses on (1) managerial experience, (2) financial and operational capability, and (3) disposition to comply with the law. The decision finds no credible evidence that Mr. Icahn's control of TWA would deprive it of the managerial experience necessary to meet the fitness standard or result in an unfit operation and finds no compelling case to warrant an investigation based on TWA's other allegations. I would like to submit the decision for the record, Mr. Chairman.

That concludes my prepared statement. I will be happy to answer any questions that you may have.